IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1278 OF 2007

Uttam Tanaji Salunkhe ..Applicant

Vs.

Ashok Maruti Karpe and anr. ..Respondents

Mr. Kafil Khan & Savita Mundra for applicant.
Mr. R.V. Pawaskar for respondent no.1.
Mr. S.R. Shinde, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : September 17, 2007.

P.C.:

1. Heard Mr. Khan the learned counsel for the applicant who is seeking special leave to appeal under Section 378(4) of Cr.P.C. against the order of acquittal passed by the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai in C.C. No.6626/SS/2005 filed under Section 138 of the Negotiable Instruments Act, 1881.

2. In the cross-examination of the complainant before the learned Magistrate it was noted that the

debt for the repayment of which the subject cheque of Rs.50,000/- was issued and was dishonoured was paid in three different instalments as under:-

(a) 1st Instalment Rs.18,000/- : Spet. 2000
(b) 2nd Instalment Rs.16,000/- : Dec. 2000
(c) 3rd Instalment Rs.16,000/- : March 2001

. The trial court noted that for recovery of the debt the limitation of three years had already lapsed and, therefore, the subject cheque was issued in respect of the debt which was time barred and consequently the complaint was dismissed.

3. The complainant also admitted that there was no documentary evidence to show that he had advanced the above stated amount to the accused. He also stated that accused was not his friend and also denied the allegation that he had obtained the cheque from the accused forcibly in the police station. He also stated that he was not doing the business of money lending. The learned counsel for the applicant relied upon the Supreme Court judgment in the case of A.V.

Murthy vs. B.S. Nagabasavanna [2002 (1) Crimes 306 (SC)]. Para 6 of the said judgment lays down the caveat for entertaining the complaints in respect of the debts which are time barred in the following words:-

> ". This is not a case where the cheque was drawn in respect of a debt or liability, which was completely barred from being enforced under law. If for example, the cheque was drawn in respect of a debt or liability payable under a wagering contract, it could have been said that that debt or liability is not legally enforceable as it is a claim, which is prohibited unde law. This case is not a case of that type. But we are certain that at this stage of the proceedings, to say that the cheque drawn by the respondent was in respect of a debt or liability, which was not legally enforceable, was clearly illegal and erroneous."

. In the above stated case the debt liability had also appeared in the abalance-sheet as on 31/3/1997 and if the amount borrowed by the respondent was shown in the balance-sheet, it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made, as observed by their Lordships. Therefore, the law laid down in Nagabasavanna’s case is not applicable in the instant case.

4. Hence, leave to appeal is hereby refused and the application is rejected.

(B.H. Marlapalle,J.)